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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.

2012-120

12 **BLANCA OFELIA REYES; AKA**  
13 **BLANCA OFELIA GUTIERREZ**  
14 **44184 Gallipoli Place**  
**Hemet, CA 92544**

**A C C U S A T I O N**

15 **Registered Nurse License No. RN 416651**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about August 31, 1987, the Board of Registered Nursing issued Registered  
24 Nurse License Number RN 416651 to Blanca Ofelia Reyes, aka Blanca Ofelia Gutierrez  
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on May 31, 2011, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

...

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a

1 license or to suspend or revoke a license or otherwise take disciplinary  
2 action against a person who holds a license, upon the ground that the  
3 applicant or the licensee has been convicted of a crime substantially related  
4 to the qualifications, functions, and duties of the licensee in question, the  
5 record of conviction of the crime shall be conclusive evidence of the fact  
6 that the conviction occurred, but only of that fact, and the board may inquire  
7 into the circumstances surrounding the commission of the crime in order to  
8 fix the degree of discipline or to determine if the conviction is substantially  
9 related to the qualifications, functions, and duties of the licensee in question.

10 As used in this section, 'license' includes 'certificate,' 'permit,'  
11 'authority,' and 'registration.'

12 10. Section 2761 of the Code states:

13 The board may take disciplinary action against a certified or licensed  
14 nurse or deny an application for a certificate or license for any of the  
15 following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the  
17 following:

18 ...

19 (f) Conviction of a felony or of any offense substantially related to the  
20 qualifications, functions, and duties of a registered nurse, in which event the  
21 record of the conviction shall be conclusive evidence thereof.

22 ...

23 11. Section 2762 of the Code states:

24 In addition to other acts constituting unprofessional conduct within the  
25 meaning of this chapter [the Nursing Practice Act], it is unprofessional  
26 conduct for a person licensed under this chapter to do any of the following:

27 ....

28 (b) Use any controlled substance as defined in Division 10  
(commencing with Section 11000) of the Health and Safety Code, or any  
dangerous drug or dangerous device as defined in Section 4022, or alcoholic  
beverages, to an extent or in a manner dangerous or injurious to himself or  
herself, any other person, or the public or to the extent that such use impairs  
his or her ability to conduct with safety to the public the practice authorized  
by his or her license.

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1 (c) Be convicted of a criminal offense involving the prescription,  
2 consumption, or self-administration of any of the substances described in  
3 subdivisions (a) and (b) of this section, or the possession of, or falsification  
4 of a record pertaining to, the substances described in subdivision (a) of this  
5 section, in which event the record of the conviction is conclusive evidence  
6 thereof.

7 ...

## 8 REGULATORY PROVISIONS

9 12. California Code of Regulations, title 16, section 1444, states:

10 A conviction or act shall be considered to be substantially related to  
11 the qualifications, functions or duties of a registered nurse if to a substantial  
12 degree it evidences the present or potential unfitness of a registered nurse to  
13 practice in a manner consistent with the public health, safety, or welfare.  
14 Such convictions or acts shall include but not be limited to the following:

15 (a) Assaultive or abusive conduct including, but not limited to, those  
16 violations listed in subdivision (d) of Penal Code Section 11160.

17 (b) Failure to comply with any mandatory reporting requirements.

18 (c) Theft, dishonesty, fraud, or deceit.

19 (d) Any conviction or act subject to an order of registration pursuant to  
20 Section 290 of the Penal Code.

21 13. California Code of Regulations, title 16, section 1445 states:

22 ....

23 (b) When considering the suspension or revocation of a license on the  
24 grounds that a registered nurse has been convicted of a crime, the board, in  
25 evaluating the rehabilitation of such person and his/her eligibility for a  
26 license will consider the following criteria:

27 (1) Nature and severity of the act(s) or offense(s).

28 (2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or  
offense(s).

(4) Whether the licensee has complied with any terms of parole,  
probation, restitution or any other sanctions lawfully imposed against the  
licensee.

(5) If applicable, evidence of expungement proceedings pursuant to  
Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (March 28, 2008 Criminal Convictions for DUI on January 29, 2008)

8 15. Respondent has subjected her license to disciplinary action under sections 490 and  
9 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are  
10 substantially related to the qualifications, functions, and duties of a registered nurse. The  
11 circumstances are as follows:

12 a. On or about March 28, 2008, in a criminal proceeding entitled *The People of the*  
13 *State of California v. Blanca Ofelia Reyes*, in Riverside County Superior Court, case number  
14 SWM073894, Respondent was convicted of violating Vehicle Code section 23152, subdivision  
15 (a), driving under the influence of alcohol; and Vehicle Code section 23152, subdivision (b),  
16 driving with a blood alcohol concentration (BAC) of 0.08% or more, both misdemeanors.

17 b. As a result of her convictions, Respondent was sentenced to five years summary  
18 probation, ordered to serve fifteen days in custody and pay \$1763.40 in fines. Respondent was  
19 further ordered to complete a four month first time offender DUI program. Respondent was later  
20 charged with violating her probation in this matter as outlined in paragraph 16, below.

21 c. The facts that led to the convictions are that on or about January 29, 2008,  
22 Respondent was contacted at approximately 2:30 a.m. by a California Highway Patrol Officer.  
23 Respondent was found sitting next to her vehicle, which had become stuck on a dirt embankment.  
24 The CHP officer observed Respondent walking with an unsteady gate. Respondent's eyes were  
25 red and watery, and there was the smell of alcohol coming from Respondent's breath and person.  
26 Respondent failed a series of field sobriety tests and was arrested on suspicion of DUI.  
27 Respondent submitted to a blood draw in order to determine her blood alcohol level.  
28 Respondent's BAC was found to be 0.19% by weight more than twice the legal limit.

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1 17. Respondent has subjected her registered nurse license to disciplinary action under  
2 section 2762, subdivision (b) of the Code, for unprofessional conduct, in that on or about January  
3 29, 2008, as described in paragraph 15 above, Respondent used alcoholic beverages to an extent  
4 or in a manner that was dangerous and injurious to herself and potentially dangerous to others, in  
5 that she operated a motor vehicle with a significantly high BAC.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

8 18. Respondent has subjected her registered nurse license to disciplinary action under  
9 section 2762, subdivision (c) of the Code, for unprofessional conduct, in that on or about March  
10 28, 2008 as described in paragraph 15 above, Respondent was convicted of criminal offenses  
11 involving the consumption of alcohol.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Revoking or suspending Registered Nurse License Number RN 416651, issued to  
16 Blanca Ofelia Reyes, aka Blanca Ofelia Gutierrez;
- 17 2. Ordering Blanca Ofelia Reyes to pay the Board of Registered Nursing the reasonable  
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
19 Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.
- 21
- 22

23 DATED: August 18, 2011

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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